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June 16, 2015

BY ECF

The Honorable Thomas P. Griesa  
U.S. District Court for the Southern District of New York  
Daniel Patrick Moynihan U.S. Courthouse  
500 Pearl Street - Room 1630  
New York, NY 10007-1312

Re: *Marie Laurette Dussault v. Republic of Argentina*,  
No. 06 Civ. 13085 (TPG)

Dear Judge Griesa:

I write in response to plaintiff's letter, dated June 8, 2015, asking the Court to grant plaintiff a *pari passu* injunction in connection with English law-governed debt instruments, i.e., *not* the New York law-governed debt subject to the 1994 Fiscal Agency Agreement ("1994 FAA") that contains the *pari passu* clause that has been the subject of these proceedings.

The Republic respectfully requests that the Court continue to hold plaintiff's submission in abeyance, or otherwise set a briefing schedule permitting the Republic 45 days to respond. Such a schedule would be necessary because plaintiff's request is not, as plaintiff contends, simply a "me too" request for relief that the Court has already entered. Rather, it raises new, substantive issues that would need to be litigated, and bar the relief she seeks.

*First*, plaintiff's request for injunctive relief cannot be granted because she has not even brought a *pari passu* claim in this action, let alone obtained summary judgment on such a claim. *See Melvin v. UA Local 13 Pension Plan*, 236 F.R.D. 139, 144 (W.D.N.Y. 2006) ("a properly plead claim remains a necessary predicate to any recovery"). As the Court has recognized, to properly seek the injunction plaintiff requests, she must first formally bring, and

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then obtain summary judgment on, a *pari passu* cause of action. *See* May 29, 2015 Hr'g. Tr. at 7:21-22 (“THE COURT: I think the record should be very clear. A formal motion [for summary judgment on the *pari passu* clause] would be in order.”). Unless and until plaintiff does so, any *pari passu* injunctive relief sought by plaintiff is improper on its face.<sup>1</sup>

*Second*, plaintiff’s request must be denied because she has offered no evidence supporting the position that the meaning and application of the *pari passu* clause under English law, which governs her bonds, is consistent with this Court’s *pari passu* orders applying New York law. In fact, all relevant English law authorities indicate that English courts would *not* read the provision as supporting the *pari passu* injunctions obtained by other plaintiffs in this litigation. *C.f.* Bank of England Financial Markets Law Committee, Issue 79: *Pari Passu* Clauses (2005) (rejecting notion that *pari passu* clause supports ratable payment injunctions); *Kensington Int’l Ltd. v. Republic of Congo*, 2002 No. 1088, [2003] EWHC (Comm) 2331 (Eng.) (Tomlinson, J.) (denying application for *pari passu* injunctive relief).

The Republic accordingly respectfully requests a continued abeyance until plaintiff properly raises a *pari passu* claim and seeks summary judgment, or otherwise a response deadline of at least 45 days after the Court provides notice, but in no event before July 14, 2015, as that is the date on which the Court has ordered the Republic to respond to motions of other plaintiffs to amend their complaints to add *pari passu* claims based on their English law debt. *See* Dkt. No. 27, *Red Pines LLC v. Republic of Argentina*, No. 14 Civ. 09427 (TPG).

Respectfully submitted,



Carmine D. Boecuzzi

cc: Counsel of Record (by ECF)

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<sup>1</sup> Plaintiff is thus wrong that the Court’s June 4, 2015 order granting other plaintiffs *summary judgment* on their 1994 FAA *pari passu* claims supports her request here for *injunctive* relief. As those other plaintiffs recognized, *summary judgment* is a necessary predicate to any injunction. *See id.* at 4:21-25 (“Counsel for NML: Plaintiffs are not asking today for an injunction. . . . The only thing plaintiffs are asking for is a determination [of] their rights under the *pari passu* clause.”)